

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18-cv-00111-FDW**

RODNEY A. KOON,)	
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
ERIC A. HOOKS,)	
)	
Respondent.)	
)	

THIS MATTER is before the Court upon its own motion.

Petitioner is a prisoner of the state of North Carolina, who, on October 24, 2016, filed a complaint pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of North Carolina. Compl., Koon v. Hooks, No. 1:18-cv-00084-FDW (N.C.W.D.), Doc. No. 1. After conducting a frivolity review, the Court for the Eastern District dismissed the § 1983 complaint without prejudice. May 11, 2017 Order, id. at Doc. No. 10.

Petitioner filed a motion on December 15, 2017, requesting that his § 1983 complaint be construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and amended to include an ineffective assistance of counsel claim. Mot. for Recon., id. at Doc. No. 12. The Court for the Eastern District granted Petitioner's motion, and ordered that the action be reinstated as a § 2254 petition for writ of habeas corpus and transferred to this Court, where venue is proper. Mar, 30, 2018 Order, id. at Doc. No. 13.

On April 2, 2018, this Court entered an Order notifying Petitioner that his § 2254 petition did not comply with Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts, which requires that habeas petitions follow a specific format. April 2, 2018 Order, id. at Doc. No. 15. In compliance with the Court's Order, the Clerk of Court mailed Petitioner a blank § 2254 form proscribed for use in this Court. Petitioner was instructed to

complete it, sign it under penalty of perjury, and return it to the Clerk of Court for the Western District of North Carolina. *Id.*

Petitioner completed the § 2254 form, signed it under penalty of perjury, and for reasons known only to him, mailed it to the Clerk of Court for the Eastern District of North Carolina, where it was docketed as a new § 2254 petition. (Doc. No. 1.) On April 23, 2018, the Eastern District transferred the entire case to this Court. Because Petitioner did not put his civil case number (1:18-cv-00084) on his § 2254 form, it was docketed here as a new civil action (1:18-cv-00111), as well.

Petitioner filed the instant § 2254 petition in response to the Court's April 2, 2018 Order in case 1:18-cv-00084. Accordingly, the Clerk of Court shall be directed to transfer it to that case and to close the instant civil case.

IT IS, THEREFORE, ORDERED that the Clerk shall transfer the Petition for Writ of Habeas Corpus (Doc. No. 1) to civil case 1:18-cv-00084-FDW, where it should be docketed as an Amended Petition for Writ of Habeas Corpus. The Clerk is respectfully requested to then close the instant case.

Signed: June 1, 2018



Frank D. Whitney
Chief United States District Judge

